MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROYAL JOHNSON**, on March 18, 2003 at 3:00 P.M., in Room 317-B & C Capitol.

ROLL CALL

Members Present:
Sen. Royal Johnson, Chairman (R)
Sen. Corey Stapleton, Vice Chairman (R)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Gary L. Perry (R)
Sen. Don Ryan (D)
Sen. Emily Stonington (D)
Sen. Bob Story Jr. (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Services Division
Marion Mood, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing & Date Posted: HB 417, 3/10/2003;
HB 580, 3/10/2003;
HB 337, 3/10/2003

Executive Action: None

HEARING ON HB 417

Sponsor: **REP. GEORGE GOLIE, HD 44, GREAT FALLS**

Proponents: **John Fitzpatrick, NorthWestern Energy**

Aidan Myhre, MDU
Tom Daubert, Navitas

Opponents: **None**

SEN. COREY STAPLETON, SD 10, BILLINGS, chaired the hearing for **CHAIRMAN JOHNSON** who was presenting two bills in other committees.

Opening Statement by Sponsor:

REP. GEORGE GOLIE, HD 44, GREAT FALLS, stated Congress had enacted the Public Utility Regulatory Policies Act (PURPA) in 1978 which covered a wide range of energy issues. This Act encouraged electricity co-generation and small power plant production by requiring electric utilities to purchase electric power from co-generation and small power facilities. The law had been controversial from its inception, largely because it forced utilities to acquire power from small power producers at rates well above the utilities' cost of production or open market prices. A similar law was adopted in Montana and administered by the PSC. HB 417 was a contingent repealer which would eliminate the state law if Congress repealed the Act at the federal level which it was considering at this time. He advised companies with power contracts entered into before the effective date would not be affected by HB 417; those contracts remained binding until their expiration. If enacted, this bill would eliminate the requirement for PURPA-type contracts in the future.

Proponents' Testimony:

John Fitzpatrick, NorthWestern Energy, submitted **EXHIBIT(ens57a01),** a list of Tier II Qualifying Facilities, a summary of a recent docket, and a sample of a NorthWestern Energy power bill. He stated PURPA had numerous impacts on energy in this country; he wanted to address the provision intended to stimulate new sources of electric generation. He admitted it had been successful, ensuring companies other than established utilities got involved in new generation; its attempt to develop alternative sources of energy supply was less successful in Montana, though. It led to alternative type providers supplying power from traditional energy sources such as hydro- and thermo-electric as well as from small wind power projects. The first page of the handout summarized the contracts NorthWestern Energy had inherited from Montana Power Company and showed the bulk of the generation coming from two sources, Billings Generation, Inc. and CELP Montana One, both of which were thermal plants. The prices shown were at least double those in NorthWestern Energy's current portfolio. The second page was a table showing rates,

contract and anticipated market cost as well as a contract minus market cost column. These represented the additional, above market charges which consumers in NorthWestern's territory have to pay because these Qualifying Facilities (QF) are in the system. Some adjustments had been made but it still left $1.1 billion in over-market cost built into the cost of electricity coming from these QF's. On the sample power bill, he had highlighted the additional over-market portion and commented these charges would continue until such time as the PURPA contracts expired. He repeated HB 417 would repeal the state provisions of PURPA once the federal government enacted such legislation.

Aidan Myhre, MDU, also rose in support of HB 417, stating it was good public policy.

Tom Daubert, Navitas Energy, stated he had opposed HB 417 as introduced, believing some of PURPA's objectives were positive but supported it with the amendments which protected existing contracts.

Informational Testimony:

Greg Jergeson, PSC, advised **Martin Jacobson, PSC staff,** would be available to answer any questions from the committee and stated based on information he had just received, repeal of the Act by the U.S. House of Representatives was certain but unclear for the U.S. Senate. He was concerned with cluttering up Montana's statute with contingent laws which made it difficult for constituents to know which laws applied.

Questions from Committee Members and Responses:

SEN. GARY PERRY, SD 16, MANHATTAN, asked if it was conceivable more QF's would apply under this statute before its effective date since it was contingent on a decision by Congress, and he wondered what the additional cost to ratepayers would be if this bill did not pass. **Mr. Fitzpatrick** replied one of the House amendments ensured this bill did not affect companies who had filed petitions for QF status prior to the effective date of this Act; one of those companies was Navitas. Since HB 417 did not specify an effective date, it would automatically become effective October 1, 2003; the likelihood of other entities applying was unknown but conceivable. Navitas had made their petition to the PSC which declared they were a Qualifying Facility under the law and mandated a rate below what they had hoped but which was consistent with PSC rules; consequently, Navitas took this issue to court and was suing the commission; should they be successful, it was conceivable that a number of

companies could come in, seeking QF status. This would be disruptive to default portfolio procurement because contracts NorthWestern Energy may not need would be handed to them. **SEN. EMILY STONINGTON, SD 15, BOZEMAN,** inquired whether there were any other QF's outside of Navitas, and **Mr. Fitzpatrick** stated to his knowledge, there were no others in his company's service area. **SEN. STONINGTON** wondered if a company were to petition for QF status under current law, would it have to be granted. **Mr. Fitzpatrick** affirmed this and added an important factor was the rate which the PSC would set up; the commission had determined the applicable rate in the case of Navitas was the interim rate which was a short-term rate of $10 per megawatt. He added if Navitas was successful in their lawsuit, this rate would change. **SEN. STONINGTON** inquired why Navitas was considered a QF. **Mr. Fitzpatrick** thought they qualified because they either were not a utility power producer, or the project they presented was less than 80 megawatts which is the cut-off in current statute; they simply asked for this designation from the PSC, and the commission ruled they met the requirements. **SEN. MIKE TAYLOR, SD 37, PROCTOR,** asked for the location of CELP Montana One, and **Mr. Fitzpatrick** advised it was located between Colstrip and Forsyth. **SEN. TAYLOR** stated wind power prices on the handout, EXHIBIT (1), seemed reasonable at $24 and $26; the PSC had set their rate at only $10, and he wondered how this compared to Navitas' expectations. **Mr. Daubert** replied Navitas had proposed a rate of $29 to $30 and added he had no doubt wind power could be priced competitively. **SEN. TAYLOR** wondered if someone from the commission could comment on the $10 rate. **Martin Jacobson, PSC,** explained in the early 1980's, the commission had laid out a program for a process by which QF's applied for rates and status, and the rules adopted by the PSC created a path were long-term QF's such as Navitas would have to compete in price through a competitive bid. If a bid failed, the alternative was to assign the short-term rate which was $10. **SEN. TAYLOR** inquired how passage of HB 417 would affect decisions and rulings. **Mr. Jacobson** replied it should not affect their ruling at all; he had not seen the most recent amendment but felt the Navitas application had been made to the commission before the bill would go into effect and if court action demanded, the commission would re-address this issue, and Navitas could be a QF with a rate acceptable to them. **SEN. DON RYAN, SD 22, GREAT FALLS,** looked for confirmation that NorthWestern Energy was required to purchase the power as per his handout at those same prices, no matter what the time of day. **Mr. Fitzpatrick** understood this to be the case.

Closing by Sponsor:

REP. GOLIE closed on HB 417, saying since reliable and affordable power was the ultimate goal, it did not make any sense to have a law on the books which cost the tax payer $1.1 million over the next thirty years.

Note: CHAIRMAN JOHNSON took over the hearing at this point.

HEARING ON HB 580

Sponsor: **REP. ROD BITNEY, HD 77, KALISPELL**

Proponents: **Geoff Feiss, MT Telecommunications Assn.**
Bill Squires, Blackfoot Telephone Cooperative
Greg Jergeson, PSC
Bonnie Lorang, MT Independent Telecommunications Systems

Opponents: **None**

Opening Statement by Sponsor:

REP. ROD BITNEY, HD 77, KALISPELL, presented HB 580, stating it was requested by Montana's independent rural telephone companies because under current law, the PSC had no specific authority under which to settle disputes among telecommunications carriers. Should disputes arise between companies, their only recourse heretofore was to go to court which was both expensive and time consuming. HB 580 provided an alternative, namely the forum in which disputes could be settled in a timely and less expensive manner, and he stressed the commission was the expert agency in Montana because it understood telecommunications law and regulatory policy.

{Tape: 1; Side: B}
Proponents' Testimony:

Geoff Feiss, MT Telecommunications Association, repeated current law gave small companies as well as others little recourse to settle their disputes without having to go to court and, as a result, disputes sometimes may not get resolved to the detriment of small companies who could not afford to go to court. He praised the sponsor's efforts in bringing this bill forward and briefly went over various aspects of HB 580 which followed the Montana Administrative Procedures Act (MAPA). He contended while the commission's authority to expedite and resolve disputes was being sought, in **Commissioner Rowe's** opinion, the bill served as a deterrent to going that far.

Bill Squires, Blackfoot Telephone Cooperative, also rose in support of HB 580, stating it was a very important piece of legislation for Montana's telecommunications industry. He gave a brief description of his company which had been founded in 1954 and currently employed about 200 people in Missoula and western Montana with an annual payroll of about $12 million. The company had survived the recent telecommunications burst and in order to continue to grow and provide the high-quality jobs, the company needed the ability to resolve disputes on a carrier to carrier basis in an expedited process; he hastened to say these disputes did not include the end-user; the concern was with resolving disputes between telecommunications companies and the agreements which are in place to make information and telecommunications flow. He added almost anytime a telephone call was made, it involved more than one telecommunications company, and it was those carrier relationships which sometimes fell into dispute. He echoed previous testimony with regard to the commission's expertise and welcomed having the opportunity to resolve potential disputes in a timely and less costly fashion.

Greg Jergeson, PSC, submitted written testimony, **EXHIBIT(ens57a02).**

Bonnie Lorang, MT Independent Telecommunications Systems, also rose in support of HB 580.

Questions from Committee Members and Responses:

SEN. BOB STORY, SD 12, PARK CITY, asked if HB 580 affected any ongoing disputes, and **Mr. Feiss** stated it did not. **SEN. STORY** wondered why the commission would support a bill which totally guided the commission's actions; he felt the PSC already had the authority described therein; and he questioned why it would exempt the PSC from the Procedures Act in one section and then take three pages to describe what they could and could not do. **Mr. Jergeson** contended the commission had reviewed the bill and was satisfied with the language; he personally had no objection to the descriptions. **SEN. TAYLOR** quipped that sometimes the House passed bills which the Senate then killed and, referring to page 3, line 15 where it stated "not to exceed $10,000" in a resolution dispute, asked about the basis for this figure. **Mr. Feiss** was not sure if this was current law; he thought it was used because it seemed to be a reasonable amount. **SEN. TAYLOR** inquired why the Fiscal Note limited disputes to five cases per year. **Mr. Squires** asked to defer to the PSC, adding he actually subscribed to **Commissioner Rowe's** thinking this venue would discourage the filing of complaints; at any rate, five cases was more than he envisioned his company bringing forth in a year. **SEN. TAYLOR** wondered if one of their disputes involved Ronan

Telephone Company, and **Mr. Squires** assured him that case had been resolved. **SEN. TAYLOR** posed the case limit issue to **Mr. Jergeson** who explained they had asked their staff to come up with a reasonable number and Fiscal Note since they expected an increase in case load but not being able to forecast an exact number, and needed to be staffed sufficiently. He added this would be a one-time appropriation with regard to further discussions of HB 2 in a conference committee. **SEN. TAYLOR** wondered if this came up in HB 2, how would he handle quantifying caseload with regard to funding. **Mr. Jergeson** replied he would not hire .5 FTE anticipating a certain caseload but would assess the situation once cases came up. **SEN. COREY STAPLETON, SD 10, BILLINGS,** understood the possibility of adding one FTE, namely an attorney, back into the PSC at the commission's request, and now there was talk of an additional .5 FTE to handle this potential caseload. **Mr. Jergeson** stated the existence of a Fiscal Note was no guarantee the Legislature would add FTE's indicated therein. The argument regarding the attorney position which the commission had requested was based on current and emerging workload stemming from cases anticipated outside of HB 580. **SEN. PERRY** asked for an explanation of the term "ex parte", and **Mr. Feiss** stated it dealt with the rules under which a company could approach the PSC acting as a quasi-judicial body, and it meant "matters out of court". **SEN. PERRY** wondered if the commission's decision was final or was it subject to appeal. **Mr. Feiss** stated it was subject to appeal in court.

Closing by Sponsor:

REP. BITNEY closed on HB 580.

HEARING ON HB 337

Sponsor: **REP. RICK RIPLEY, HD 50, WOLF CREEK**

Proponents:
John Fitzpatrick, NorthWestern Energy
Doug Hardy, MT Electric Cooperatives Assn. (MECA)
Jeanne Barnard, MECA
REP. ALAN OLSON, HD 8, ROUNDUP
Geoff Feiss, MT Telecommunications Assn.
Phil Maxwell, 3Rivers Telephone
Aidan Myhre, MDU
Dan Flynn, IBEW 44

Opponents:
Chris Gallus, MT Housemovers Assn.
Duane Ostermiller, Ostermiller House Moving
Don Tamietti, Tamietti House Movers,

MT House Movers Assn.
Wayne L. Overhuls, Overhuls House Moving
Leah Bomgardner, MT House Movers Assn.
Barry "Spook" Stang, MT Motor Carriers Assn.
Arnie Pollock, self
Curt French, Big Sky House Moving
Gary Treweek, MT House Movers Assn. & Treweek Construction

Opening Statement by Sponsor:

REP. RICK RIPLEY, HD 50, WOLF CREEK, presented HB 337, stating it freed electric and telephone ratepayers from having to pay the cost of raising or moving utility lines to accommodate house movers and movers of other tall structures along the state's roads and highways. He stressed HB 337 was needed because a bill enacted in 1983 was not working; it set up a cost-sharing mechanism between the house mover and the utility on a 50/50 basis, pursuant to a schedule maintained by the PSC or the local cooperative offices. In the past four years, NorthWestern Energy had only been able to recover 23% of its costs, and the cooperatives about 30%; these costs were passed on to ratepayers. While his original bill talked about a 100% cost to the movers, representatives of both the utilities and the house moving industry were able to agree on amendments, including the 50/50 cost sharing which made the bill palatable, and it passed the House committee 11 - 1.

Proponents' Testimony:

John Fitzpatrick, NorthWestern Energy, rose in support of HB 337, stating he fully understood the moving of large structures necessitated raising or cutting utility lines, such as electric power lines, telephone lines, sometimes fibre-optic cable or cable TV, and moving poles. Most of Montana's utility lines ranged between 16 and 22 feet above the roadways' surface with higher voltage electricity lines up to 40 feet above the road surface. He advised in North and South Dakota, Wyoming, Idaho and Washington, house movers paid 100% of the costs associated with the line cuts to facilitate the structure's moving. Current statute in Montana provided for a 50/50 cost share between the utility and the house mover; this was based on a rate schedule maintained by the PSC but it had not been kept up-to-date, and the costs reimbursed by house movers were inadequate. He pointed to **EXHIBIT(ens57a03)**, a fact sheet illustrating costs and provisions in this state and others, showing his company's recovery rate at an average of 23% over the past four years. When the company is reimbursed by the house mover, the money is credited to a miscellaneous revenue account and is credited back

toward rates when the rate case takes place, meaning it did not go to the shareholders but the ratepayers. Likewise, any cost not recovered from the house movers ends up in rates and is essentially paid by the ratepayer. As the second page showed, most house moves were not terribly expensive at an average of $1,515; the average reimbursement, though, only reached $346. He repeated in the original bill, they had asked for a 100% reimbursement but negotiated with the house moving companies which resulted in a 100% reimbursement for objects higher than 23 feet because those required very expensive lifts; if the structure was under 23 feet, the cost share remained 50/50. The companies were required to submit a rate schedule to the PSC, and the cooperatives would file their rate schedules with their home offices for review by the house movers. He stressed this situation needed to be addressed by the Legislature, citing a move last year in which a 29 foot high structure was moved from Townsend to Helena which necessitated cutting lines in 69 separate locations; the house move cost $80,000 and NorthWestern received $4,500 as a reimbursement.
{Tape: 2; Side: A}
Lastly, he advised they had included incentives on how to manage these loads better such as reducing their height whenever possible, and made concessions with regard to the required deposits: if the move took place within the utility's service territory, the deposit only needed to be 50%; outside of it, the deposit would be 100% because it could prove difficult to collect.

Doug Hardy, MT Electric Cooperatives Assn. (**MECA**), submitted written testimony, **EXHIBIT(ens57a04)**, and **EXHIBIT(ens57a05)**, a supporting document in the form of a letter from the MT Department of Transportation.

Jeanne Barnard, MECA, also provided written testimony including a map, **EXHIBIT(ens57a06)**.

REP. ALAN OLSON, HD 8, ROUNDUP, explained for many of his constituents who were members of a rural cooperative, this amounted to quite an expense because it had to be recovered somehow. He had been prepared to vote for HB 337 as originally introduced in the House but respected the negotiations which took place and supported it in its current form. It was a necessary bill and benefitted both the utilities and the ratepayers, even though 50% would still be passed on to the ratepayer.

Geoff Feiss, MT Telecommunications Assn., also rose in support of HB 337 because in his opinion, the costs should be borne to a larger extent by the entity which caused them. He appreciated the change from "reasonable" to "total" cost because reasonable

did not always reflect the actual costs incurred. He pointed out, though, that most telecommunications lines are suspended 4' to 5' below electricity wires giving them a height of 18', and the bill's threshold was 23' with regard to the 50/50 cost sharing. He explained a second loop was created before any wire was actually cut so service would not be interrupted, be it electricity or telecommunications; after the structure had moved through, the old wire was put back together and the loop removed, all of which was a complicated process. He felt the ratepayer should not have to participate in the cost at all but HB 337 was a step in the right direction.

Phil Maxwell, 3Rivers Telephone, voiced his company's support for HB 337 and advised most of their wires were below the 23' level, resulting in their paying 50% of all cost; even though they had favored the bill in its original version, this was still better than what current law mandated.

Aidan Myhre, MDU, agreed with previous testimony, adding the bill enabled them to recoup these costs.

Dan Flynn, IBEW 44, stated he represented the workers who moved these lines for the cooperatives as well as for NorthWestern Energy and favored any law making this a more efficient and safer operation.

Opponents' Testimony:

Chris Gallus, Montana House Movers Assn., felt Montana's roads should be open to the public; for over fifty years, utilities had paid the entire cost of moving their own lines and for the last twenty years, these costs were shared equally between the utilities and the entity moving the structure. He contended the current law, enacted in 1983, was the best approach and, while agreeing the rates needed to be increased to reflect current cost, he opposed implementing a complete cost shifting. He stated his organization provided a valuable service, saving homes and historic buildings from destruction and creating new opportunities for homeowners; he added house movers were also saving taxpayers the cost of demolition and helped keep landfills free of tons of materials. He stated Montana had always allowed utilities to occupy the public right-of-way next to its streets and highways and in exchange, the public benefitted from lower rates; however, when those lines obstructed the public thoroughfare, they should be moved by the entity who put them there, and the cost should be borne by them as well. He felt it was beneficial to require utilities to pay for the cost of raising the lines since it encouraged them to create less obstruction but a 50/50 split would ensure these costs were kept

as low as possible. To underscore his thoughts, he quoted from a decision the Montana Supreme Court had made:" It is not unreasonable to impose the cost of wire raising on utilities. Imposing cost on utilities is perhaps the most effective way of spreading the burdens created. In this way, consumers share both the burdens and the general benefits which the statute intended and has calculated to secure. Imposing the cost on moving companies would be too burdensome, and it would make the activity of moving buildings cost prohibitive." He maintained utilities had the choice to raise lines or perhaps put them underground and pointed out farmers could be affected by this as well because of the ever increasing size of farm implements. In closing, he contended house movers should not have to compromise again, having made a large concession in 1983 when they agreed to share in 50% of the cost of wire raising when before, they did not have to participate at all; while he agreed rates should be updated and outstanding monies owed the utilities should be paid, he felt all of this could be accomplished within the confines of existing law.

Duane Ostermiller, Ostermiller House Moving, stated HB 337 was a total turn-around from current statute which had worked for twenty years. He voiced strong opposition to having to bear 100% of the cost of moving or raising wires, travel time, and possible fringe benefits, and to having to prepare and file an estimate of total cost. This legislation included telecommunications cables whereas current legislation addressed electric utility property only. He opposed the cost sharing provision and the provision of having to bear 100% of the cost associated with moving structures higher than 23'. He also took exception to the provision house movers may not interfere with wires, cables or poles unless the owner or firms controlling them refused to move them after having been notified. Moreover, HB 337 did not give any consideration to jobs in progress or bids already submitted, and he asked the committee not to pass this bill as current law was sufficient.

{Tape: 2; Side: B}
Don Tamietti, Tamietti House Movers, MT House Movers Assn., submitted **EXHIBIT(ens57a07),** a letter from the University of Montana- Western and a "before and after" picture of a historic mansion his company had moved. He stated he was the third generation in his family's business, and had moved many historic buildings; he contended these kinds of projects would no longer be possible because of the added costs once this bill became law. Furthermore, it would drastically change the house moving industry because they were struggling to keep it alive now, and it would result in a huge job loss in this and related industries.

Wayne Overhuls, Overhuls House Moving, agreed with previous testimony and provided his own written statement, **EXHIBIT(ens57a08).**

Leah Bomgardner, MT House Movers Assn., stated she lived in one of these "transplanted" houses which she had purchased 16 years ago; it would have been demolished had she not bought it. She recalled hiring a house mover and paying the utility the fee they were asking, adding she could not have afforded a house otherwise, and she was proud of her home and the fact she was re-using a valuable resource. She submitted **EXHIBIT(ens57a09),** a letter from another proud new homeowner. In addition, she reported Ostermiller House Moving had set up equipment at the Billings Fair for the past two years, Habitat For Humanity had built single family dwellings on the equipment, and Ostermiller moved them to their new location upon completion. She urged the committee not to pass this bill and to let these companies work within existing law.

Barry "Spook" Stang, Montana Motor Carriers Assn., stated historically, the Legislature has held since utilities were able to use public right-of-way free of charge, they should share in the cost of raising wires or otherwise accommodate structures being moved across the state. In looking over the statement from the Department of Transportation contained in previous testimony, after discounting moves taking place on interstate highways, there were only are 60 to 80 occurrences per year with structures more than 20' in height, and perhaps 20 to 25 of those were over 23'. He felt highway users had been subsidizing utility companies for years in letting them use the highway right-of-way. He maintained current law was fair to both house movers and utility companies, adding his carrier members paid over $60 million per year in taxes to use the highways, and would still subsidize the cost of raising utility wires for structures more than 23' tall. He urged to keep current law, and to take any arguments to the PSC who was responsible for setting these rates, rather than continuing to subsidize the power companies and utilities.

Arnie Pollock, self, rose in opposition to HB 337, saying if the utilities were losing that much money, they could file for a pertinent rate increase with the PSC which they had not done since 1992.

Chuck French, Big Sky House Moving, also voiced strong opposition to HB 337, saying it was a one-sided bill, and the utility companies had not considered the impact it would have on the house moving industry in Montana. Small businesses are the backbone of the state's economy, and they must be allowed to

survive. He stressed the present system was fair and should be left as is, with the PSC as the cost regulator.

Gary Treweek, Treweek Construction, submitted written testimony, **EXHIBIT(ens57a10).**

Informational Testimony:

Greg Jergeson, PSC, assured the committee the PSC was appearing only as an informational witness and submitted a letter from **Commissioner Bob Rowe, EXHIBIT(ens57a11),** meant to dispel rumors about the commission's role in this issue.

Questions from Committee Members and Responses:

SEN. STONINGTON wondered why the utilities were not recovering 50% of their cost and whether it was true they had not applied for a rate increase since 1992 as mentioned in previous testimony. **Mr. Jergeson** deferred to **Martin Jacobson** who replied the rates for house moving were not set in general rate cases by the PSC but by rule. The commission was asked by the Legislature to review these rates every two years. **SEN. STONINGTON** inquired if he could explain the statistics showing utilities recovering only 23% of their cost. **Mr. Jacobson** speculated the rates were out of date by at least two years, and it could be the commission viewed its statutory mandate of average cost as true cost. **SEN. STONINGTON** posed this question to **Mr. Fitzpatrick** who had quoted these numbers earlier and asked if the problem had persisted for that long, why had they not approached the PSC and requested a new rule making process. **Mr. Fitzpatrick** explained the problem lay in the way the rule was structured; there were flat rates for cutting lines, and it did not take into consideration the time or how big a crew would be needed, resulting an inadequate recovery. He suggested his company's goal with this bill was essentially a time and materials rate schedule where they would post, with the PSC, the cost of a lineman, the equipment needed, and the time spent on the job, and have the commission calculate cost based on these factors. **SEN. STONINGTON** stated under current law, the PSC based the calculations "on the average cost per line or pole for time and materials expended", and asked why they did not just ask for an amendment to the rule making. **Mr. Fitzpatrick** replied they had made numerous suggestions but suspected the last time there was public rule making was probably ten years ago. **SEN. STONINGTON** referred to page 3, line 12 and stated having an "and" in the provision implied structures of any height could not be moved. **REP. RIPLEY** agreed with her, adding this had not been the intent. When **SEN. STONINGTON** inquired how this could be remedied, the sponsor answered he would strike the word "and".

SEN. STONINGTON ascertained smaller structures then could be moved since they seldom required that wires be lifted. She also asked the sponsor why he thought it fair to charge the house movers the full cost of raising the wires when they were strung in public right-of-ways. **REP. RIPLEY** replied he did not think it was fair for the ratepayers to pay the 50%, either; being a rancher who sometimes had to move implements down the road, he stated he was responsible for the cost of raising or cutting the wires. **SEN. STONINGTON** wondered if he was willing to bear those costs even though, as a taxpayer, had already paid for those wires. **REP. RIPLEY** told her he was. **SEN. RYAN** referred to **Ms. Barnard's** testimony regarding Canadian homes being moved through her service territory and the impact it had on her local cooperative and asked **Mr. Gallus** how he would solve this so the ratepayers would not have to pay for the costs associated with the moves.

{Tape: 3; Side: A}

Mr. Gallus was not sure this could be solved entirely and suggested to have the moving company prepay 50% of the costs. **SEN. RYAN** wondered, still in the context of **Ms. Barnard's** testimony, if a moving schedule could be submitted so crews would not have to waste entire days waiting to do their job, or if a bond could be considered to defer costs. **Mr. Gallus** agreed this made sense and submitted both parties would benefit from increased communication between them as well because sometimes, house movers had to wait for the utility crews to arrive. **SEN. STAPLETON** calculated the bill as amended only dealt with about 26 permits annually at a cost of $1,500 per move, assuming 50% were being paid for, and he wondered if the estimated $20,000 justified yet another statute and whether this was good state-wide policy. **Mr. Fitzpatrick** replied it was good policy because often, these costs amounted to many thousands of dollars, with the most dramatic case his company faced involved $76,000 which was not paid by the mover. He admitted most necessary lifts were low lifts, and the moves could be accomplished by lifting the lines; they were willing to share the costs 50/50 for these. With tall structures, though, the cost of cutting and looping the wires increased dramatically and they were looking for protection regarding those expenses. **SEN. STAPLETON** asked whether there were any other areas or programs where the utility was subsidizing citizens, such as the USB programs. **Mr. Fitzpatrick** replied the USB program was one example where they spent more money than they collected, adding some of the programs they participated in were instituted as a matter of public policy. **SEN. STAPLETON** inquired whether he supported some of the subsidy programs, and **Mr. Fitzpatrick** explained in a perfect world, the business would prefer not to subsidize programs but because of the unique nature of being a public utility, oftentimes they did, such as funding public service advertisements. He felt it was

time to make a change in Montana, repeating surrounding states charged the moving companies 100% of those costs which he was not even asking for; he agreed they were using public right-of-ways at no charge because the government of this state acknowledged utility services were important and had to be made available to the largest number of people at the lowest cost. If the utilities had to pay for use of the right-of-ways, the cost of electricity would increase. **SEN. GARY PERRY** recalled the mansion he had moved and asked for what purpose it was being used in Dillon. **Mr. Tamietti** replied it was used for the facility's offices as well as for alumni gatherings. **SEN. PERRY** inquired as to the cost of the move, and **Mr. Tamietti** stated it was $56,000 including excavation and foundation work. **SEN. PERRY** wondered about the cost of raising the lines pertaining to this move, and **Mr. Tamietti** informed him there was none because the utility donated their crews' time and materials. **SEN. PERRY** asked why the cost of raising the wires could not be passed on to either the owner or future buyer. **Mr. Treweek** stated the cost was being passed on to the owner. **SEN. PERRY** continued, saying the discussion was about the utilities, i.e., the ratepayers subsidizing the costs when they could be passed on to the new house owner. **Mr. Treweek** replied the cost was passed on to the new owner. **SEN. PERRY** contended this bill dealt with the cost of raising wires which in the past had been borne by the utilities, and it was attempting to recover a portion from the house movers. **Mr. Treweek** agreed, stating their portion of the cost was included in the bid and thus, paid by the customer. **CHAIRMAN JOHNSON** intervened, saying only part of it is passed on to the ratepayers; one issue was who would pay the remainder which currently was subsidized and the other was the difference in rates and actual costs. **SEN. BEA McCARTHY, SD 29, ANACONDA,** recalled he was going to move several homes in North Dakota, and **Mr. Overhuls** explained these were 50 homes to be moved from an air force base in that state to a reservation. **SEN. McCARTHY** wondered if his company would be charged 100% of the costs to which he replied he did not know yet since this they were just bidding on the job and had no prior experience with North Dakota. **SEN. McCARTHY** stated **Mr. Fitzpatrick** had mentioned 100% in his testimony which he confirmed. **SEN. McCARTHY** ascertained his bid for a Montana job would be different from that for North Dakota. **Mr. Overhuls** affirmed this, adding the arrangement with utility companies with regard to stringing the wires across highways might be entirely different in North Dakota. **SEN. McCARTHY** wondered how her cooperative notified its members of an impending disruption of service when they themselves did not know ahead of time when the house movers would come through. **Ms. Barnard** replied this was a problem for them; in two cases it had involved schools, and all they could do was notify them of the anticipated

time, and then perform updates until such time as the arrival was imminent. To help mitigate the disruption, she tried to get the movers to come through early or late in the day. **SEN. McCARTHY** asked if she had to go through the list of subscribers, and **Ms. Barnard** replied they mostly did, and sometimes made radio announcements which would not reach everyone because of work schedules. **SEN. McCARTHY** wondered if they limited certain times of the year where they did not allow any house to be brought across the border, and **Ms. Barnard** replied they did not; basically, they were at the movers' beck and call. **SEN. STORY** asked if the 35 houses she had mentioned earlier where being moved by the same company and along the same highway. **Ms. Barnard** explained this was not the case; there were houses being moved from Malstrom Air Force Base to a nearby reservation; houses came from Canada, some were moved along nearby Highway 2, and equipment was being transported to Wyoming for the coal bed methane development. **SEN. STORY** inquired whether it would not be cost-effective to move the wires higher permanently instead of having to keep raising them. **Ms. Barnard** replied they had tried doing this but it was difficult to anticipate the various heights of the structures; it was not only a question of small homes coming through. **SEN. STORY** referred to the unrecoverable amount of almost $8,000 mentioned in her testimony and asked how they spread this amount across the rate base. **Ms. Barnard** explained this amount had accumulated over a period of three years; many times, they would just charge for time and materials and added the rate for raising the wires was $41.52 per line. **SEN. STORY** also referred to language on page 3, line 13 of the bill and asked if this referred to a pre-fabricated home which **REP. RIPLEY** confirmed and added he should have pointed out earlier that language on page 2, line 30 was identical and had been stricken. **SEN. TAYLOR** referred to **Mr. Fitzpatrick's** statement a deposit should be made for each job and wondered if the cost should be based on the number of wires which needed to be raised for any given job. **Mr. Fitzpatrick** replied the estimate should reflect the cost for the entire project, and the deposit would be a portion of the estimated cost, taking into consideration time, equipment and materials. **SEN. TAYLOR** quoted from **Commissioner Rowe's** letter where it stated "This bill is not ambiguous and as currently written, would not have the PSC review or approve costs." **Mr. Fitzpatrick** agreed, saying the bill stated the costs had to be filed with the commission; he added his company had no problem with amending the bill to where the PSC would approve the costs but felt it would need additional language specifying a turn-around time for processing the requests. In answer to **SEN. PERRY's** question regarding a height limit, **Mr. Fitzpatrick** stated it was supposed to be below 23'; had given the example of a typical line ranging from 18' to 22' in his handout. **SEN. PERRY**

wondered whether there was no charge for structures below 23' because no lifting was needed. **Mr. Fitzpatrick** explained there would be no charge if they could drive underneath; if the lines had to be lifted, then there would be a 50/50 charge on an owner occupied house; if it was over 23' and the line had to be cut, then the charge was 100%.

{Tape: 3; Side: B}

SEN. PERRY addressed **Mr. Gallus** and stated for a structure under 23', the house mover and the utility each paid 50% under current law; he surmised the house movers' objection was to paying the additional 50% for structures over 23'. He was concerned with the way this was being handled; in any business, cost incurred was passed on to the ultimate consumer via price; in this case, ratepayers were subsidizing a business, and he wondered why these costs were not passed on entirely to either the owner or the ultimate consumer. **Mr. Gallus** explained the cost was not passed on entirely because of a compromise the utilities had reached in 1983; the issue was they were occupying and obstructing the public right-of-way and a public thoroughfare at no expense to themselves even though they were the one who had created the obstruction in the first place. He maintained the utilities should have to bear 100% of the cost as they had for 54 years. **SEN. PERRY** appreciated **Ms. Bomgardner's** testimony with regard to her home and stated on the other hand, houses valued at hundreds of thousands of dollars could be moved down the highways with ratepayers in essence subsidizing the move; he wondered how she would feel about that, especially if she were barely making ends meet. **Mr. Gallus** repeated the utility had created the obstruction and maintained they should bear some responsibility for creating it; highways were created for people to use, free of obstructions, and not for the convenience of the utilities. **SEN. PERRY** stated the utilities had constructed power lines, often across highways, for the purpose of providing electricity to the public and inquired whether they had not properly been permitted in accordance with the law. **Mr. Gallus** confirmed they had. **CHAIRMAN JOHNSON** asked **Mr. Fitzpatrick** to repeat how much of the $80,000 incurred in a house move from Townsend to Helena the company had recovered, and **Mr. Fitzpatrick** stated it was $4,500. **CHAIRMAN JOHNSON** stated current law would have required submission of a bid, and he asked if the utility would have been privy to that. **Mr. Fitzpatrick** replied they had, in fact, provided the house movers with cost estimates and selected a feasible route for them which the latter took to the PSC; the commission then provided them with the simple rates of $42 per line. He repeated the problem with this was that the PSC's rates did not nearly cover actual cost. **CHAIRMAN JOHNSON** inquired whether they had appealed this to the commission at the time, and **Mr. Fitzpatrick** stated they had brought this legislation instead. **CHAIRMAN JOHNSON** asked **Mr. Jergeson** if there was anything in

current law which did not allow the commission to set rules covering everything the utilities wanted with this legislation. **Mr. Jergeson** replied if testimony was to be believed, the commission was remiss in applying "average costs" because in some cases, these might not be close to the true cost; and if only 50% of an "average cost" was recoverable, he surmised the reimbursement could be far below actual cost incurred. **CHAIRMAN JOHNSON** wondered if the commission could handle an appeal with regard to cost recovery in this case since the cost of the $80,000 move was known beforehand. **Mr. Jergeson** understood there were rules describing the average cost of moves; he did not know whether there was a process for an appeal made to them on a particular case. **CHAIRMAN JOHNSON** asked if the PSC, under their rule making authority, could extend their rules to cover this case. **Mr. Jergeson** explained they could only make rules according to the law, and it depended on how descriptive the law was in this case. **SEN. STORY** stated some people would opt to buy and move a house to a different location rather than building a new one because of cost; if they had to pay 50% of the costs associated with the move, this would have to be factored in as well. If the total cost of moving a house, then, became too high, there would be no move at all.

Closing by Sponsor:

REP. RIPLEY closed on HB 337, stating utilities did not pay the cost in Montana but ratepayers did; in five surrounding states, the movers paid 100%. He agreed small business was the backbone of our economy and stated if he thought this bill would break even one small company, he would table it himself; by the same token, it was not fair utilities recovered only 25% of the cost associated with these moves.

ADJOURNMENT

Adjournment: 5:40 P.M.

_____
SEN. ROYAL JOHNSON, Chairman

_____
MARION MOOD, Secretary

RJ/MM

EXHIBIT(ens57aad)